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PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED PERSONS IN THE CONDITIONS OF THE CONFLICT IN DONBASS

Abstract:

The conflict in Donbass is the greatest problem of Ukraine. As a result of this conflict, Ukraine has lost a part of its territory, a lot of money etc. But it is only a part of the problem. Some problems are invisible and arise only after a certain period of time. One of these problems is internally displaced persons. The article examines the problems that arise in the practice of realization of the rights of internally displaced persons in Ukraine and outlines possible ways of further work of state authorities of Ukraine in this area. The problem of internally displaced persons is nationwide since it concerns a very large number of people and is extremely important from a political point of view. It should be noted that the state is trying to resolve this problem in every possible way, but many issues remain unsolved regarding internally displaced persons, which led to the choice of the topic of our research. Speaking about the state's efforts to resolve the problems associated with the internally displaced persons, above all, implies attempts to regulate new relations for our country at the legislative level. At the same time, the legislation of Ukraine should be harmonized with generally accepted international norms, which should include the 1951 Convention Relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons. Regarding the Ukrainian legislation on the internally displaced persons, at the legal level, these relations are regulated by the Law of Ukraine “On Providing Rights and Freedoms of Internally Displaced Persons” and many other by-laws. If the legal regulation of the problems of internally displaced persons is generally at an appropriate level, then

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in practice there are a lot of problems that range from small households to the most important ones, such as the right to vote in elections at different levels.

Keywords:

internally displaced persons, conflict, Donbass, protection of rights.

Introduction

With the increase in the problem of internal involuntary displacements, the global community was concerned about the humanitarian problems associated with them. Traditionally, it was believed that internal displacement was within the competence of sovereign states, and not international structures (except the Red Cross, which oversaw the implementation of the 1949 Geneva Conventions on the protection of civilians in armed conflicts). However, there was a gradual emergence of an understanding of the need to develop common approaches to solving the problems of persons who were displaced within their own countries and to provide sovereign states with international assistance in this area.

However, international legislation, as a rule, defines only a general vector of problem-solving, while national legislation, based on an international one, specifies the latter and addresses specific problems. In our case, such problem is internally displaced persons. It should be noted that conditionally internally displaced persons can be divided into two groups: internally displaced persons from the Crimea and internally displaced persons from the Donbas. There is a fundamental difference between these groups since the first ones could stay in the occupied peninsula and become citizens of Russia with all the necessary amount of rights and remain protected under international law. As for the second group (settlers from the Donbas), they did not have a choice, as the pseudo-republics were not recognized by anyone, and the inhabitants of the occupied Donbas were almost deprived of civil rights.

Considering this division, it is quite understandable that there is a significantly smaller amount of internally displaced persons from Crimea than from the occupied Donbas. However, for Ukraine, there is no difference where the internally displaced people came from because they are all citizens of our state and are in a need of protection.

Presentation of the main research material

In 1972 the General Assembly of the United Nations extended the mandate of the Office of the United Nations High Commissioner for Refugees (UN-

HCR), which covered refugees and asylum seekers (people who forced to leave their countries of residence and seek international protection) for persons who displaced within their own countries. In 1998 the UN bodies approved the Guiding Principles on Internal Displacement. The world community came to the conclusion that while existing international humanitarian law and human rights law apply to internally displaced persons, they are in some aspects insufficient in providing adequate protection. Guiding principles are not a binding legal instrument but are based on international law, notably such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention relating to the Status of Stateless Persons. They detail the provisions of these acts that meet the specific needs of internally displaced persons, and explain how they should be used in conditions of internal involuntary displacement. The guidelines contain the definition of internally displaced persons. According to them, it is “person or groups of persons who were forced to flee or leave their homes or places of usual residence as a result or in order to avoid the consequences of a military conflict, mass violence, human rights violations, spontaneous or caused by human activity, and who did not cross internationally recognized state borders”. These laws provide protection against involuntary displacement, relocation assistance, safe return, resettlement and reintegration, and define the guarantees to be provided at all stages of the process. In turn, refugees are individuals who, because of justified fears, become victims of persecution based on race, religion, nationality, citizenship, membership of a particular social group or political convictions, are outside the country and cannot or don't want to use protection of this country due to such fears.

In connection to the above, internally displaced persons should apply both national legislation (that applies to all Ukrainian citizens) and special legislation (that applies only to internally displaced persons). In order to solve this problem M. Kobets points out that there is a need to bring the conceptual and terminological apparatus used in the legislative and regulatory acts on the issues of internally displaced persons into unity and unification².

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² M. Kobets, *Shchodo vyznachennia poniattia “vnutrishno peremishchena osoba” v zakonodavstvi Ukrainy*, “Porivnialno-analitychne pravo”, 1/2016, p. 202.

As a result of the military action in the territory of Donetsk and Luhansk regions, a significant part of the inhabitants of temporarily occupied territories and settlements on the territory of which the state authorities temporarily do not exercise their powers, and settlements located on the line of collision, moved to other settlements in the territory of Ukraine. This process became massive in scope, and the state was forced to respond to it, to address acute problems related to the emergence of a significant number of settlers in its territory and to bring its legislation into conformity with these requirements.

The problem with internally displaced persons arose in 2014 after the occupation of Crimea. Before this situation, our country had not known about internally displaced persons that is why we did not have the legislation to regulate such problem. After that, (October 2014) the Law of Ukraine “On ensuring of rights and freedoms of internally displaced persons” was adopted. In turn, the Cabinet of Ministers of Ukraine adopted 11 orders and disposals about the procedure for registration and organization of accounting, granting of financial assistance to the settlers, etc. The complex state program about supporting social adaptation and reintegration of Ukrainian citizens who moved from temporarily occupied territory of Ukraine and parts of counterterrorism operations to other regions of Ukraine for the period until 2017 was adopted in December 2015. Today Ukraine takes all available measures under the Constitution and laws of Ukraine, international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine to prevent emergence of conditions for internal displacements, protection of and adherence to rights and freedoms of internally displaced persons, create conditions for the voluntary return of such persons to their abandoned place of residence or integration at the new place of residence in Ukraine. However, the adoption of laws alone is not enough for solving all of the problems.

As M. Savchyn correctly notes, from the point of view of the doctrine of the substantive content of the rights of internally displaced persons, the state has positive obligations to ensure their real access to material and spiritual goods, opportunities for the realization of their freedom³. M. Zakirov points out that, along with employment, another painful problem for settlers, of course, is the housing problem⁴.

³ M. Savchyn, *Sutnisnyi zmist prav liudyny ta prava vnutrishnikh peremishchenykh osib. Zdiisnennia ta zakhyst prav vnutrishno peremishchenykh osib*, [in:] *Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii, 20.04.2017*, Uzhhorod 2017, p. 45.

⁴ M. Zakirov, *Vnutrishno peremishcheni osoby v Ukraini: suchasni realii*, <http://nbuviap.gov.ua/index.php?option=com_content&view=article&id=2206:vnutrishno-peremishcheni-osobi-v-ukrajini-suchasni-realiji-2&catid=63&Itemid=393> (12.03.2018).

S. Buletsa points out that previously internally displaced persons received assistance and treatment at the expense of state or regional programs, but now they are currently virtually deprived of it and they remain without adequate security⁵.

However, the above problems of internally displaced persons exist also for other Ukrainian citizens who are not settlers.

Only 41.5% of internally displaced persons, compared to 60.1% before moving, managed to find a job in a new place. The decline in employment after displacement is about 20%. At that, 27.6% of respondents were unemployed, and 30.9% of internally displaced persons claim they do not need a job because they receive a disability or old-age pension or are on child-care leave. Most internally displaced persons pay for housing; 66% live in rented accommodation, in particular in rented apartments (43%), rented houses (16%), and rented rooms in apartments (7%). A lot of the internally displaced persons (22%) live with their relatives or with host families. Only 1% of internally displaced persons live in their own homes at the TKU⁶.

The support of internally displaced persons is provided with both at the nationwide and local levels. So, central executive body responsible for implementation of state education and science policy shall establish conditions for citizens to obtain pre-school, complete general secondary, out-of-school education, vocational and higher education with regard to information regarding internally displaced persons. In this context, it should be noted that only 28 schools have been transferred from the occupied territories in two years, including 18 universities. The number of students of the displaced universities is more than 40 thousand people, and the educational process is provided by 3.4 thousand scientific and pedagogical workers.

Respectively, local governments within their powers shall:

- inform local state administrations regarding possible places and conditions for temporary residence/stay of internally displaced persons, on state of infrastructure, an environment in such places;
- provide internally displaced persons with suitable housing for accommodation, from a communal property (utility costs shall be subject to payment by a person);

⁵ S. B. Buletsa, *Pravo na medychnu ta psykholohichnu dopomohu vnutrishno peremishchenykh osib*, [in:] *Materialy...*, p. 22.

⁶ *Zvit natsionalnoi systemy monitorynhu sytuatsii z vnutrishno peremishchenymy osobamy*, <http://mtot.gov.ua/wp-content/uploads/nms_report_march_2017_ukr_new.pdf> (12.03.2018).

- decide the question of acquisition of land rights land from communal ownership by internally displaced persons at the place of their factual stay, pursuant to the laws of Ukraine;
- upon the request of internally displaced person, assist in transporting person's movable property in order to return to an abandoned residence place.

The state has to ensure the construction and investments in housing infrastructure of cities and other localities-relevant executive authorities and local governments with public banking institutions, as well as using opportunity to attract international humanitarian or charitable assistance shall develop regional long-term programs of one-time long-term soft loan (including mortgage) for internally displaced persons for land acquisition and house construction, or loan for house purchasing for internally displaced persons.

Consequently, the failure to provide comprehensive assistance to internally displaced persons is due to problems in the Ukrainian economy – the state cannot always provide financial support to the necessary extent. However, internally displaced persons face not only financial problems.

There was an important entry into force of the amendments to the Law of Ukraine “On Free Legal Aid”, in particular, the right for free secondary legal aid was given to both internally displaced persons and citizens of Ukraine who applied for registration as internally displaced persons (on questions, related to the receipt of the certificate on the registration of internally displaced persons, until the receipt of the certificate of registration of the internally displaced person).

However, in spite of the proper legislative provision of internally displaced persons rights, in practice, everything does not look so appealing. In particular, there are difficulties related to the termination, refusal to pay social benefits, the bureaucracy of the verification procedure, problems with the restoration of documents (passports, education documents, title documents for property, others), subsidies, etc. In this context, we agree with O. Rogach and M. Menzhul who note that despite the adoption of special regulations, the current legislation is imperfect and does not contain proper and effective legal, in particular, organizational and procedural mechanisms for ensuring the rights of internally displaced persons, which negatively affects the state of national security of Ukraine and slows down the European integration processes⁷.

Internally displaced persons should enjoy the same rights and freedoms as other persons that permanently reside in Ukraine in accordance to the Constitu-

⁷ O. Rohach, M. Menzhul, *Mekhanizm ponovlennia terytorialnoi tsilisnosti Ukrainy ta vnutrishnia vymushena mihratsiia*, [in:] *Materialy...*, p. 33.

tion, legislation of Ukraine and international agreements. Their discrimination upon exercising any rights and freedoms based on their internal displacement shall be prohibited.

An internally displaced person shall enjoy his/her voting right at the elections of the President of Ukraine, members of Parliament of Ukraine, state referendum through changing of the voting place without changing of the voting address as provided in part three of Article 7 of the Law of Ukraine “On State Register of Voters”. But there are a lot of problems in practice associated with voting in local and nationwide elections. In particular, according to part 2 of Article 8 of the Law of Ukraine “On the State Register of Voters”, the electoral address of the voter is the address at which his/her permanent place of residence is registered in accordance with the Law of Ukraine “On freedom of movement and free choice of place of residence”. The electoral addresses of the majority of voters belong to the temporarily occupied territories, in particular, the territories of the Autonomous Republic of Crimea and certain districts of Donetsk and Luhansk oblasts, which do not fall under the power of the Ukrainian state authorities and local self-government. Changing the election address under the current legislation results in the loss of the status of the internally displaced person, and all citizens who have changed their voting addresses from February 2014 to 2017 in the meaning of domestic legislation are no longer considered to be internally displaced persons. With the notion of electoral address Ukrainian legislation also links the voters to one or another polling station, and hence the right to vote in the elections. For example, in accordance with Article 2 of the Law of Ukraine “On Elections of People’s Deputies of Ukraine”, the grounds for the voter to exercise his right to vote in the elections are his inclusion in the voters list at the polling station, while the voter is included in the list of voters at the polling station at his election address. Similar provisions are also reflected in the Laws of Ukraine “On Local Elections” and “On Elections of the President of Ukraine”. Since polling stations of the internally displaced persons’ election addresses are located in territories where national and local elections are not held, the internally displaced persons can take part in the elections only by the procedure of a temporary voting place without changing the election address. The possibility of temporarily changing the voter’s place without changes in his election address is not foreseen for local elections, since the right to vote at local elections is determined by the ownership of a citizen who has the right to vote to a particular territorial community, and the possibility of changing the place of voting in these elections would lead to difficulties in voter registration (for example, in case of change of voting place within one village or settlement) and would increase the risks of multiple vot-

ing and other abuses. Accordingly, if we consider the literal interpretation of the norms of the Law of Ukraine “On Local Elections”, the internally displaced persons may vote only on elections held in territorial communities belonging to temporarily uncontrolled territories of Ukraine. In other words, the possibility of participation of such voters in elections in other territorial communities is virtually eliminated⁸.

There is a problem with registration of internally displaced persons in Ukraine because a lot of people have a place of living in Ukraine and in the occupied territory. To solve this problem, an internally displaced persons registry was introduced, which should clearly identify who has the right to receive payments. However, a lot of people living in the occupied territory have registered in Ukraine for benefits. In this regard, it is impossible to accurately determine the number of internally displaced persons. Thus, official statistics show that there are about 1.5 million of internally displaced persons in Ukraine, but according to various estimates, it is only half of that amount.

A registered internally displaced person shall have rights for employment, pension benefits, mandatory state social insurance against unemployment, temporary disability, accident and occupational disease that caused disability, as well as right to obtain social benefits in accordance with current legislation of Ukraine.

In general, experts note the high level of integration of the internally displaced persons in society. Even a foreigner travelling around Ukraine, does not see it as a country with over 1.5 million domestic refugees: settlers seem to be dissolved in society and their behaviour does not differ from the rest of the society members, in contrast from the forced resettlement of such scales in other countries where a large number of migrants is striking. As noted in The Report of the Ukrainian Helsinki Union, it happened thanks to the high degree of solidarity of Ukrainian society, and also because of that, the settlers in Ukraine became, in their masses, the most active and the most enlightened part of the community of the occupied territories.

Conclusion

Internally displaced persons can be divided into two groups: internally displaced persons from the Crimea and internally displaced persons from the Donbas. There is a fundamental difference between these groups since the first ones

⁸ D. S. Kovryzhenko, N. V. Pashkova, S. S. Savelii, *Vyborchi prava vnutrishno peregnyshchennykh osib: problemy ta shliakhy zakonodavchoho vrehuliuvannia*, “Visnyk Tsentralnoi vyborchoi komisii”, 1/2017, p. 49.

could stay in the occupied peninsula and become citizens of Russia with all the necessary amount of rights and remain protected under the international law. As for the second group (settlers from the Donbas), they, in fact, did not have a choice, as the pseudo-republics were not recognized by anyone, and the inhabitants of the occupied Donbas were almost deprived of civil rights.

At the new place of residence, internally displaced persons face issues of financial and immaterial nature. If all material problems are not solved due to difficulties in the economic life of Ukraine, the problems of intangible nature (for example, the right to vote) are not regulated due to lack of necessary legislation.

Integration and adaptation of internally displaced people in the newly created territorial communities is an important prerequisite for the proper provision of their rights in the near future, as well as a factor in civic consolidation. However, contrary to the Constitution of Ukraine, the internally displaced persons are effectively deprived of the right to vote in local elections, to elect people's deputies in single-member constituencies, and also to take part in various forms of direct local democracy – bodies of self-organization of the population, public hearings, present local initiatives, etc. Such a situation may eventually lead to accusations against the State regarding discrimination against citizens and claims before international courts, in particular, the European Court of Human Rights. Thus, there is an urgent need to amend the laws that will create the basis for the participation of the internally displaced persons in the affairs of the territorial communities within which they live.

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BIBLIOGRAPHY:

- ✓ Buletsa S. B., *Pravo na medychnu ta psykholohichnu dopomohu vnutrishno peremishchenykh osib*, [in:] *Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii, 20.04.2017*, Uzhhorod 2017
- ✓ Kobets M., *Shchodo vyznachennia poniattia "vnutrishno peremishchena osoba" v zakonodavstvi Ukrainy*, "Porivnialno-analitychne pravo", 1/2016

- ✓ Kovryzhenko D. S., Pashkova N. V., Savelii S. S., *Vyborchi prava vnutrishno peremishchenykh osib: problemy ta shliakhy zakonodavchoho vrehuliuvannia*, “Visnyk Tsentralnoi vyborchoi komisii”, 1/2017
- ✓ Rohach O., Menzhul M., *Mekhanizm ponovlennia terytorialnoi tsilisnosti Ukrainy ta vnutrishnia vymushena mihratsiia*, [in:] *Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii, 20.04.2017*, Uzhhorod 2017
- ✓ Savchyn M., *Sutnisnyi zmist prav liudyny ta prava vnutrishnykh peremishchenykh osib. Zdiisnennia ta zakhyst prav vnutrishno peremishchenykh osib*, [in:] *Materialy Mizhnarodnoi naukovo-praktychnoi konferentsii, 20.04.2017*, Uzhhorod 2017
- ✓ Zakirov M., *Vnutrishno peremishcheni osoby v Ukraini: suchasni realii*, <http://nbuviap.gov.ua/index.php?option=com_content&view=article&id=2206:vnutrishno-peremishcheni-osobi-v-ukrajini-suchasni-realiji-2&catid=63&Itemid=393> (12.03.2018)
- ✓ *Zvit natsionalnoi systemy monitorynhu sytuatsii z vnutrishno peremishchenyamy osobamy*, <http://mtot.gov.ua/wp-content/uploads/nms_report_march_2017_ukr_new.pdf> (12.03.2018).